

FIRST REGULAR SESSION

SENATE BILL NO. 318

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CLEMENS.

Read 1st time January 18, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1036S.011

AN ACT

To repeal sections 620.1878 and 620.1881, RSMo, and to enact in lieu thereof two new sections relating to an income tax credit for employer provided tuition reimbursement programs.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 620.1878 and 620.1881, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 620.1878 and 620.1881, to read as follows:

620.1878. For the purposes of sections 620.1875 to 620.1890, the following terms shall mean:

(1) "Average wage", the new payroll divided by the number of new jobs;

(2) "Commencement of operations", the starting date for the qualified company's first new employee, which must be no later than twelve months from the date of the proposal;

(3) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county. The department shall publish the county average wage for each county at least annually;

(4) "Department", the Missouri department of economic development;

(5) "Director", the director of the department of economic development;

(6) "Eligible employee", a person, employed by a qualified company on a full-time basis, who receives an annual salary equal to or less than the average salary for the county in which the employee is

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 employed or deemed to be employed;

19 (7) "Employee", a person employed by a qualified company;

20 [(7)] (8) "Full-time equivalent employees", employees of the qualified
21 company converted to reflect an equivalent of the number of full-time, year-round
22 employees. The method for converting part-time and seasonal employees into an
23 equivalent number of full-time, year-round employees shall be published in a rule
24 promulgated by the department as authorized in section 620.1884;

25 [(8)] (9) "Full-time, year-round employee", an employee of the company
26 that works an average of at least thirty-five hours per week for a twelve-month
27 period, and one for which the qualified company offers health insurance and pays
28 at least fifty percent of such insurance premiums;

29 [(9)] (10) "High-impact project", a qualified company that, within two
30 years from commencement of operations, creates one hundred or more new jobs;

31 [(10)] (11) "Local incentives", the present value of the dollar amount of
32 direct benefit received by a qualified company for a project facility from one or
33 more local political subdivisions, but shall not include loans or other funds
34 provided to the qualified company that must be repaid by the qualified company
35 to the political subdivision;

36 [(11)] (12) "NAICS", the 1997 edition of the North American Industry
37 Classification System as prepared by the Executive Office of the President, Office
38 of Management and Budget. Any NAICS sector, subsector, industry group or
39 industry identified in this section shall include its corresponding classification in
40 subsequent federal industry classification systems;

41 [(12)] (13) "New direct local revenue", the present value of the dollar
42 amount of direct net new tax revenues of the local political subdivisions likely to
43 be produced by the project over a ten-year period as calculated by the department
44 and net new utility revenues, provided the local incentives include a discount or
45 other direct incentives from utilities owned or operated by the political
46 subdivision;

47 [(13)] (14) "New investment", the purchase or leasing of new tangible
48 assets to be placed in operation at the project facility, which will be directly
49 related to the new jobs;

50 [(14)] (15) "New job", the number of full-time, year-round employees
51 located at the project facility that exceeds the project facility base employment
52 less any decrease in the number of full-time equivalent employees at related
53 facilities below the related facility base employment;

54 [(15)] (16) "New payroll", the amount of wages paid by a qualified
55 company to employees in new jobs;

56 [(16)] (17) "Notice of intent", a form developed by the department,
57 completed by the qualified company and submitted to the department which
58 states the qualified company's intent to hire new jobs and request benefits under
59 this program;

60 [(17)] (18) "Percent of local incentives", the amount of local incentives
61 divided by the amount of new direct local revenue;

62 [(18)] (19) "Program", the Missouri quality jobs program provided in
63 sections 620.1875 to 620.1890;

64 [(19)] (20) "Project facility", the building used by a qualified company at
65 which the new jobs and new investment will be located. A project facility may
66 include separate buildings that are located within one mile of each other such
67 that their purpose and operations are interrelated;

68 [(20)] (21) "Project facility base employment", for the twelve-month
69 period prior to the date of the proposal, the average number of full-time
70 equivalent employees located at the project facility. In the event the project
71 facility has not been in operation for a full twelve-month period, project facility
72 base employment is the average number of full-time equivalent employees for the
73 number of months the project facility has been in operation prior to the date of
74 the proposal;

75 [(21)] (22) "Project period", the time period that the benefits are provided
76 to a qualified company;

77 [(22)] (23) "Proposal", a document submitted by the department to the
78 qualified company that states the benefits that may be provided by this
79 program. The effective date of such proposal cannot be prior to the
80 commencement of operations. The proposal shall not offer benefits regarding any
81 jobs created prior to its effective date unless the proposal is for a job retention
82 project;

83 [(23)] (24) "Qualified company", a firm, partnership, joint venture,
84 association, private or public corporation whether organized for profit or not, or
85 headquarters of such entity registered to do business in Missouri that is the
86 owner or operator of a project facility. For the purposes of sections 620.1875 to
87 620.1890, the term "qualified company" shall not include:

88 (a) Gambling establishments (NAICS industry group 7132);

89 (b) Retail trade establishments (NAICS sectors 44 and 45);

90 (c) Food and drinking places (NAICS subsector 722);

91 (d) Utilities regulated by the Missouri public service commission;

92 (e) Any company that is delinquent in the payment of any nonprotested
93 taxes or any other amounts due the state or federal government or any other
94 political subdivision of this state; or

95 (f) Any company that has filed for or has publicly announced its intention
96 to file for bankruptcy protection;

97 [(24)] **(25)** "Related company" means:

98 (a) A corporation, partnership, trust, or association controlled by the
99 qualified company;

100 (b) An individual, corporation, partnership, trust, or association in control
101 of the qualified company; or

102 (c) Corporations, partnerships, trusts or associations controlled by an
103 individual, corporation, partnership, trust or association in control of the
104 qualified company. As used in this subdivision, "control of a corporation" shall
105 mean ownership, directly or indirectly, of stock possessing at least fifty percent
106 of the total combined voting power of all classes of stock entitled to vote, "control
107 of a partnership or association" shall mean ownership of at least fifty percent of
108 the capital or profits interest in such partnership or association, "control of a
109 trust" shall mean ownership, directly or indirectly, of at least fifty percent of the
110 beneficial interest in the principal or income of such trust, and ownership shall
111 be determined as provided in Section 318 of the Internal Revenue Code of 1986,
112 as amended;

113 [(25)] **(26)** "Related facility", a facility operated by the qualified company
114 or a related company located in this state that is directly related to the operations
115 of the project facility;

116 [(26)] **(27)** "Related facility base employment", for the twelve-month
117 period prior to the date of the proposal, the average number of full-time
118 equivalent employees located at all related facilities of the qualified company or
119 a related company located in this state;

120 [(27)] **(28)** "Rural area", a county in Missouri with a population less than
121 seventy-five thousand or that does not contain an individual city with a
122 population greater than fifty thousand according to the most recent federal
123 decennial census;

124 [(28)] **(29)** "Small and expanding business project", a qualified company
125 that within two years of the date of the proposal creates a minimum of twenty

126 new jobs if the project facility is located in a rural area or a minimum of forty
127 new jobs if the project facility is not located in a rural area and creates fewer
128 than one hundred new jobs regardless of the location of the project facility;

129 ~~[(29)]~~ **(30)** "Tax credits", tax credits issued by the department to offset
130 the state income taxes imposed by chapter 143, RSMo, or which may be sold or
131 refunded as provided for in this program;

132 ~~[(30)]~~ **(31)** "Technology business project", a qualified company that within
133 two years of the date of the proposal creates a minimum of ten new jobs with at
134 least seventy-five percent of the new jobs directly involved in the operations of a
135 technology company as determined by a regulation promulgated by the
136 department under the provisions of section 620.1884 and classified by NAICS
137 codes;

138 ~~[(31)]~~ **(32)** "Withholding tax", the state tax imposed by sections 143.191
139 to 143.265, RSMo.

620.1881. 1. The department of economic development shall respond
2 within thirty days to a company who provides a notice of intent with either a
3 proposal or a rejection of the notice of intent. Failure to respond on behalf of the
4 department of economic development shall result in the notice of intent being
5 deemed a proposal for the purposes of this section. A qualified company who is
6 provided a proposal for a project shall be allowed a benefit as provided in this
7 program in the amount and duration provided in this section. A qualified
8 company may receive additional periods for subsequent new jobs at the same
9 facility after the full initial period if the minimum thresholds are met as set forth
10 in sections 620.1875 to 620.1890. There is no limit on the number of periods a
11 qualified company may participate in the program, as long as the minimum
12 thresholds are achieved and the qualified company provides the department with
13 the required reporting and is in proper compliance for this program or other state
14 programs. A qualified company may elect to file a notice of intent to start a new
15 project period concurrent with an existing project period if the minimum
16 thresholds are achieved and the qualified company provides the department with
17 the required reporting and is in proper compliance for this program and other
18 state programs; however, the qualified company may not receive any further
19 benefit under the original proposal for jobs created after the date of the new
20 notice of intent, and any jobs created before the new notice of intent may not be
21 included as new jobs for the purpose of benefit calculation in relation to the new
22 proposal.

23 2. Notwithstanding any provision of law to the contrary, any qualified
24 company that is awarded benefits under this program may not also receive tax
25 credits or exemptions under sections 135.100 to 135.150, sections 135.200 to
26 135.286, section 135.535, or sections 135.900 to 135.906, RSMo, for the same new
27 jobs at the project facility. The benefits available to the company under any other
28 state programs for which the company is eligible and which utilize withholding
29 tax from the new jobs of the company must first be credited to the other state
30 program before the withholding retention level applicable under the Missouri
31 quality jobs act will begin to accrue. These other state programs include, but are
32 not limited to, the new jobs training program under sections 178.892 to 178.896,
33 RSMo, the job retention program under sections 178.760 to 178.764, RSMo, the
34 real property tax increment allocation redevelopment act, sections 99.800 to
35 99.865, RSMo, or the Missouri downtown and rural economic stimulus act under
36 sections 99.915 to 99.980, RSMo. If any qualified company also participates in
37 the new jobs training program in sections 178.892 to 178.896, RSMo, the company
38 shall retain no withholding tax, but the department shall issue a refundable tax
39 credit for the full amount of benefit allowed under this subdivision.

40 3. The types of projects and the amount of benefits to be provided are:

41 (1) Small and expanding business projects: in exchange for the
42 consideration provided by the new tax revenues and other economic stimulus that
43 will be generated by the new jobs created by the program, a qualified company
44 may retain an amount equal to the withholding tax from the new jobs that would
45 otherwise be withheld and remitted by the qualified company under the
46 provisions of sections 143.191 to 143.265, RSMo, for a period of three years from
47 the date the required number of new jobs were created if the average wage of the
48 new payroll equals or exceeds the county average wage or for a period of five
49 years from the date the required number of new jobs were created if the average
50 wage of the new payroll equals or exceeds one hundred twenty percent of the
51 county average wage;

52 (2) Technology business projects: in exchange for the consideration
53 provided by the new tax revenues and other economic stimulus that will be
54 generated by the new jobs created by the program, a qualified company may
55 retain an amount equal to a maximum of five percent of new payroll for a period
56 of five years from the date the required number of jobs were created from the
57 withholding tax of the new jobs that would otherwise be withheld and remitted
58 by the qualified company under the provisions of sections 143.191 to 143.265,

59 RSMo, if the average wage of the new payroll equals or exceeds the county
60 average wage. An additional one-half percent of new payroll may be added to the
61 five percent maximum if the average wage of the new payroll in any year exceeds
62 one hundred twenty percent of the county average wage in the county in which
63 the project facility is located, plus an additional one-half percent of new payroll
64 may be added if the average wage of the new payroll in any year exceeds one
65 hundred forty percent of the average wage in the county in which the project
66 facility is located. The department shall issue a refundable tax credit for any
67 difference between the amount of benefit allowed under this subdivision and the
68 amount of withholding tax retained by the company, in the event the withholding
69 tax is not sufficient to provide the entire amount of benefit due to the qualified
70 company under this subdivision. The calendar year annual maximum amount of
71 tax credits that may be issued to any qualified company for a project or
72 combination of projects is five hundred thousand dollars;

73 (3) High impact projects: in exchange for the consideration provided by
74 the new tax revenues and other economic stimulus that will be generated by the
75 new jobs created by the program, a qualified company may retain an amount from
76 the withholding tax of the new jobs that would otherwise be withheld and
77 remitted by the qualified company under the provisions of sections 143.191 to
78 143.265, RSMo, equal to three percent of new payroll for a period of five years
79 from the date the required number of jobs were created if the average wage of the
80 new payroll equals or exceeds the county average wage of the county in which the
81 project facility is located. The percentage of payroll allowed under this
82 subdivision shall be three and one-half percent of new payroll if the average wage
83 of the new payroll in any year exceeds one hundred twenty percent of the county
84 average wage in the county in which the project facility is located. The
85 percentage of payroll allowed under this subdivision shall be four percent of new
86 payroll if the average wage of the new payroll in any year exceeds one hundred
87 forty percent of the county average wage in the county in which the project
88 facility is located. An additional one percent of new payroll may be added to
89 these percentages if local incentives equal between ten percent and twenty-four
90 percent of the new direct local revenue; an additional two percent of new payroll
91 is added to these percentages if the local incentives equal between twenty-five
92 percent and forty-nine percent of the new direct local revenue; or an additional
93 three percent of payroll is added to these percentages if the local incentives equal
94 fifty percent or more of the new direct local revenue. The department shall issue

95 a refundable tax credit for any difference between the amount of benefit allowed
96 under this subdivision and the amount of withholding tax retained by the
97 company, in the event the withholding tax is not sufficient to provide the entire
98 amount of benefit due to the qualified company under this subdivision. The
99 calendar year annual maximum amount of tax credits that may be issued to any
100 qualified company for a project or combination of projects is seven hundred fifty
101 thousand dollars. The calendar year annual maximum amount of tax credit that
102 may be issued to any qualified company for a project or combination of projects
103 may be increased up to one million dollars if such action is proposed by the
104 department and approved by the quality jobs advisory task force established in
105 section 620.1887; provided, however, until such time as the initial at-large
106 members of the quality jobs advisory task force are appointed, this determination
107 shall be made by the director of the department of economic development. In
108 considering such a request, the task force shall rely on economic modeling and
109 other information supplied by the department when requesting the increased
110 limit on behalf of the project;

111 (4) Job retention projects: a qualified company may receive a tax credit
112 for the retention of jobs in this state, provided the qualified company and the
113 project meets all of the following conditions:

114 (a) For each of the twenty-four months preceding the year in which
115 application for the program is made the qualified company must have maintained
116 at least one thousand full-time, year-round employees at the employer's site in
117 the state at which the jobs are based, and the average wage of such employees
118 must meet or exceed the county average wage;

119 (b) The qualified company retained at the project facility the level of
120 full-time, year-round employees that existed in the taxable year immediately
121 preceding the year in which application for the program is made;

122 (c) The qualified company is considered to have a significant statewide
123 effect on the economy, and has been determined to represent a substantial risk
124 of relocation from the state by the quality jobs advisory task force established in
125 section 620.1887; provided, however, until such time as the initial at-large
126 members of the quality jobs advisory task force are appointed, this determination
127 shall be made by the director of the department of economic development;

128 (d) The qualified company in the project facility will cause to be invested
129 a minimum of seventy million dollars in new investment prior to the end of two
130 years or will cause to be invested a minimum of thirty million dollars in new

131 investment prior to the end of two years and maintain an annual payroll of at
132 least seventy million dollars during each of the years for which a credit is
133 claimed; and

134 (e) The local taxing entities shall provide local incentives of at least fifty
135 percent of the new direct local revenues created by the project over a ten-year
136 period.

137 The quality jobs advisory task force may recommend to the department of
138 economic development that appropriate penalties be applied to the company for
139 violating the agreement. The amount of the job retention credit granted may be
140 equal to up to fifty percent of the amount of withholding tax generated by the
141 full-time, year-round jobs at the project facility for a period of five years. The
142 calendar year annual maximum amount of tax credit that may be issued to any
143 qualified company for a job retention project or combination of job retention
144 projects shall be seven hundred fifty thousand dollars per year, but the maximum
145 amount may be increased up to one million dollars if such action is proposed by
146 the department and approved by the quality jobs advisory task force established
147 in section 620.1887; provided, however, until such time as the initial at-large
148 members of the quality jobs advisory task force are appointed, this determination
149 shall be made by the director of the department of economic development. In
150 considering such a request, the task force shall rely on economic modeling and
151 other information supplied by the department when requesting the increased
152 limit on behalf of the job retention project. In no event shall the total amount of
153 all tax credits issued for the entire job retention program under this subdivision
154 exceed three million dollars annually. Notwithstanding the above, no tax credits
155 shall be issued for job retention projects approved by the department after August
156 30, 2007;

157 **(5) Tuition reimbursement programs: a qualified company may**
158 **receive a tax credit for providing tuition reimbursement to eligible**
159 **employees. The amount of the tuition reimbursement credit may equal**
160 **up to fifty percent of the expenses actually incurred in reimbursing all**
161 **or a portion of tuition expenses of eligible employees, but not to exceed**
162 **five thousand dollars per employee. In no case shall a qualified**
163 **company receive more than twenty-five thousand dollars in tax credits**
164 **authorized under this subdivision in any tax year. In no case shall the**
165 **aggregate amount of tax credits issued under this subdivision in any**
166 **tax year exceed two hundred and fifty thousand dollars. Tax credits**

167 **issued under this subdivision may be assigned, sold or transferred. The**
168 **tax credit authorized under this subdivision shall not be**
169 **refundable. Any amount of credit that exceeds the tax due for a**
170 **taxpayer's taxable year may be carried forward five years until**
171 **completely claimed.**

172 4. The qualified company shall provide an annual report of the number
173 of jobs and such other information as may be required by the department to
174 document the basis for the benefits of this program. The department may
175 withhold the approval of any benefits until it is satisfied that proper
176 documentation has been provided, and shall reduce the benefits to reflect any
177 reduction in full-time, year-round employees.

178 5. The maximum calendar year annual tax credits issued for the entire
179 program shall not exceed twelve million **two hundred and fifty thousand**
180 dollars. Notwithstanding any provision of law to the contrary, the maximum
181 annual tax credits authorized under section 135.535, RSMo, are hereby reduced
182 from ten million dollars to eight million dollars, with the balance of two million
183 dollars transferred to this program. There shall be no limit on the amount of
184 withholding taxes that may be retained by approved companies under this
185 program.

186 6. The department shall allocate the annual tax credits based on the date
187 of the proposal, reserving such tax credits based on the department's best
188 estimate of new jobs and new payroll of the project, and the other factors in the
189 determination of benefits of this program. However, the annual issuance of tax
190 credits is subject to the annual verification of the actual new payroll. The
191 allocation of tax credits for the period assigned to a project shall expire if, within
192 two years from the date of commencement of operations, or proposal if applicable,
193 the minimum thresholds have not been achieved. The qualified company may
194 retain authorized amounts from the withholding tax under this section once the
195 minimum new jobs thresholds are met for the duration of the project period. No
196 benefits shall be provided under this program until the qualified company meets
197 the minimum new jobs thresholds. In the event the qualified company does not
198 meet the minimum new job threshold, the qualified company may submit a new
199 notice of intent or the department may provide a new proposal for a new project
200 of the qualified company at the project facility or other facilities.

201 7. For a qualified company with flow-through tax treatment to its
202 members, partners, or shareholders, the tax credit shall be allowed to members,

203 partners, or shareholders in proportion to their share of ownership on the last
204 day of the qualified company's tax period.

205 8. Tax credits may be claimed against taxes otherwise imposed by
206 chapters 143 and 148, RSMo, and may not be carried forward but shall be claimed
207 within one year of the close of the taxable year for which they were issued,
208 **except as provided under subdivision 4 of subsection 3 of this section.**

209 9. Tax credits authorized by this section may be transferred, sold, or
210 assigned by filing a notarized endorsement thereof with the department that
211 names the transferee, the amount of tax credit transferred, and the value received
212 for the credit, as well as any other information reasonably requested by the
213 department.

214 10. **Except as provided under subdivision 4 of subsection 3 of this**
215 **section**, the director of revenue shall issue a refund to the qualified company to
216 the extent that the amount of credits allowed in this section exceeds the amount
217 of the qualified company's income tax.

218 11. An employee of a qualified company will receive full credit for the
219 amount of tax withheld as provided in section 143.221, RSMo.

220 12. If any provision of sections 620.1875 to 620.1890 or application thereof
221 to any person or circumstance is held invalid, the invalidity shall not affect other
222 provisions or application of these sections which can be given effect without the
223 invalid provisions or application, and to this end, the provisions of sections
224 620.1875 to 620.1890 are hereby declared severable.

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